

Words and Phrases - Meaning of Words "And/Or"

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WORDS AND PHRASES—MEANING OF WORDS “AND/OR.”—The Wisconsin Supreme Court has recently said in *Employers' Mut. Liability Ins. Co. v. Tollefson*¹: “It is manifest that we are confronted with the task of first construing ‘and/or,’ that befuddling, nameless thing, that Janus-faced verbal monstrosity, neither word nor phrase, the child of a brain of some one too lazy or too dull to express his precise meaning, or too dull to know what he did mean, now commonly used by lawyers in drafting legal documents, through carelessness or ignorance or as a cunning device to conceal rather than express meaning with view to furthering the interest of their clients. We have even observed the ‘thing’ in statutes, in the opinions of courts, and in statements in briefs of counsel, some learned and some not.” It is true that this useful abbreviation is frequently misused by careless scribes; it is also true that it is condemned with frequency by jurists who may not always appreciate its meaning.

The expression “a horse and/or a cow” does not indicate, as sometimes asserted, that the writer of those words does not know whether he means “and” or “or,” because he means both “and” and “or.” He means: “a horse and a cow, jointly and severally;” or, in non-legalistic language, he means: “a horse alone, or a cow alone, or a horse and a cow together.” This latter method of expressing the thought is an unnecessary and clumsy circumlocution, as compared with the succinct and equally definite modern expression: “a horse and/or a cow.”²

In the above instance, involving only two words to be linked together, the circumlocution is not very awkward. But suppose that a legislative draughtsman wishes to define a “fruit-store.” Suppose he says: “The term fruit-store shall comprehend all stores (and only such stores) as sell apples, oranges, bananas, and pineapples, and no other articles.” But then a store selling only one, two or three of the listed items would not be a fruit-store. Let the definition be changed to read: “* * * apples, oranges, bananas, or pineapples * * *.” Then a store selling two, three or four of the listed items would not be a fruit-store. One of the judicial contemnors of “and/or” would probably then suggest: “* * * apples, oranges, bananas, and pineapples, or any one of them, or any combination of two or more of them * * *.” This would, of course, fill the bill. But it is a clumsy circumlocution. This is the sort of legalistic verbiage that has brought the law into popular disrepute, and has made the longwindedness of lawyers and judges the laughing-stock of the laity. So why should lawyers not use instead the crisp, succinct, definite and understandable: “* * * apples, oranges, bananas, and/or pineapples * * *”?

The Wisconsin court doubtless had in mind the many instances in which the courts have felt compelled to construe “and” as meaning “or,” and vice versa, in order to unscramble legislative ineptitude in this connection. This strained construction could be largely avoided by the intelligent use of the expression “and/or” in draughting statutes, wills and contracts. Whether or not this convenient abbreviation is strictly speaking a “word,” or a “phrase,” or a “nameless thing,” is

¹ 263 N.W. 376 (1935).

² See rule 18 of the Federal Admiralty Rules, 254 U.S. appx. 8.

beside the point. Neither are "loc. cit.," "i.e.," and a lot more of convenient abbreviations, "words" or "phrases." The expression "and/or" has become a very useful addition to the English language, and whether it be "fish, flesh, fowl, or good red herring," it has come to stay.

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